



## A STUDY ON PLIGHT OF WOMEN INMATES LANGUISHING IN JAILS

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### ABSTRACT

Women prisoners suffer from greater disabilities than men do. The psychological stress caused by separation from children, the unhelpful attitude of close relations, uncertainty about the future are all factors which make their life miserable in jail. The antiquated manuals, different provisions in different States and Union Territories and insensitive approach of the jail authorities add to their woes.

Separate prison for women is a need of time. Till the provision of separate prisons are meted out, separate enclosure with strict seclusion of male inmates within the existing prison complex is to be such that the women inmates are not come into contact to male inmates during their passage to and from these enclosures. Prison Statistics India 2015, National Crime Records Bureau, as on 31/12/2015 shows that there were total 17,834 women prisoners in all the jails of India, out of which 11916 inmates are undertrials, 5740 convicts, 72 detenues and 106 others.

It is the small number of women in prisons, in compare to male prisoners, is responsible for their needs being neglected. The position of these women scattered in small clusters in jails, is highly vulnerable.

It gives the impression that woman prisoners are in greater need of maintaining requisite facilities such as privacy, security, pregnancy, childbirth and family care, diet, health care, education and recreation for children of female prisoners etc.

**KEYWORDS:** Women Prisoners, Jail, Inmates, Prison Manual, Women Prisoners with children.

***It is strongly believes that the prison is a place only for the worst offenders but it is not place for children or even women and that our laws and regulations should be changed to ensure this.***

Special care, treatment and protection is needed for some sections of the society due to their very nature of vulnerability. These weaker sections due to their easy susceptibility need special attention on the part of not only three pillars of democracy but also whole society.

In this paper, an attempt is made to probe into the plight of women inmates languishing in jails who are most susceptible and vulnerable class of society.

Women as a weaker section of society require more attention specifically when they are in detention. Moreover, pregnant women or women with child less than seven years of age if incarcerated, the trauma and impact of the same will have both on the mother and the child in life after prison cannot be ignored. Hence such cases of convicted pregnant women or the mother having young child below 7 years require human and humane approach and therefore house detention with sufficient safe guards to prevent escape must be thought of<sup>2</sup>. Therefore, pregnant women or women with child below 7 years should instead of being sent to prison, be ordered to be under house arrest. This, the Committee feels is not a charity but the legitimate right of the unborn and young children. Similar provisions shall be made in respect of such women who are remanded to judicial custody.

All the problems of the prison system, which are facing by the male inmates, are also faced by the women inmates such as - delay in trial, torture and ill-treatment, neglect of health and hygiene, insubstantial food and inadequate clothing, prison vices, deficiency in communication etc. However, some problems, which are facing by the women prisoners, are peculiar to them. One of such major problems is female vulnerability to sexual exploitation is enhanced in the male dominated prison setup while others are Pregnancy of Women Prisoners, Child Birth in Prison, Women Prisoners with children etc.

As per the Prison Statistics India, 2015, National Crime Records Bureau (NCRB), Ministry of Home Affairs, Government of India, as on 31/12/2015 shows that there were total 17,834 women prisoners in all the jails of India, out of which 11916 inmates are undertrials, 5740 convicts, 72 detenues and 106 others.

As per the NCRB<sup>3</sup> Statistics as on 31/12/2015, the total number of Jails in the country is 1,401 of which number of Women Jails is only 18 across the Country having total capacity of 4,748 woman inmates. However, the population of Women Inmates in Women Jail is only 2985 (out of which 1304 convicts, 1640 under-trials, 40 detenues and 1 other). It is also appears that most of the police stations do not have female constables or women officers, Women Jailer for every prison is only dream.

The total number of Women Prisoners with Children at the end of 2015 across the

country is 1,565 having 1,832 children with them. This means that the number of child with women prisoners is more than the number of women prisoners itself.

To ensure safety of women prisoners and guard them against any form of exploitation, it is desirable that at least one women's jail be established in each state. Separate enclosures/prisons within district or central prisons are also required to be established for housing female inmates where there are no exclusive jails for women. Till separate prisons for women are established, both male and female inmates can be confined in the same prison on the condition that female offenders are to be kept in a strictly secluded female enclosures within the prison complex. These enclosures should have a double lock system; one lock outside and the other inside. The keys of the inside should always remain in the custody of women guard inside.

***Under Article 15 (3) of the Constitution of India,*** the Government is empowered to make special provisions in order to safeguard and protect the interests of women. The Fundamental Duty under Article 51-A(e), imposes a public duty on every citizen of India that every person shall renounce all practices, which are derogatory towards women.

All India Committee on Jail Reforms (1980-83) popularly known as Mulla Committee had observed that the smaller number of women prisoners is responsible for their needs being neglected. The position of these women scattered in small clusters in jails, is highly vulnerable. The Committee recommended that:

1. A separate place with proper toilet facilities should be provided on Court premises for women prisoners availing premise before presiding Magistrate.
2. Bail should be liberally granted to women undertrial prisoners and those not able to furnish surety might be released on personal recognizance.
3. The Probation of Offenders Act should be extensively used for the benefit of women offenders.
4. Women prisoners should be lodged in separate institution meant exclusively for them.
5. Enclosures for women in common prisons should be so renovated as to ensure that women prisoners do not come in view of male prisoners. Their enclosures should have a proper double lock system.
6. Women staff should perform all general duties with regard to women offenders only.
7. Newly admitted women prisoners should be medically examined for pregnancy. Pregnant women prisoners should be transferred to local maternity hospital for purposes of delivery.

*can be addressed".*

8. While registering the birth of a child to a woman prisoner, the place of birth should not be mentioned as 'prison'. If such a birth takes place there, inside the name of locality be mentioned.
9. Pregnant and nursing women prisoners should be prescribed special diet and exempted unusable types of work.
10. There should be a separate women ward in prison hospitals.
11. Women prisoners should be permitted to retain their *Mangal Sutra*, glass or plastic bangles.
12. Women prisoners should be given adequate and proper clothing and facilities for personal hygiene and personal maintenance according to their customs.
13. Woman prisoners should be given the facility for maintaining contacts with their families through letters, visits from relations and leave.
14. Children up to the age of five years accompanying women prisoners may be allowed to be kept with them in specially organized crèches outside the main prison building.
15. State Government should encourage and support voluntary organizations in looking after women offenders.

The recommendations of the Mulla Committee on the rights of women prisoners are though not wide enough to make their life generous in confinement. However, it is the common observation that no State dared to amend its manual to cope with the recommendations.

The Jail Committees of 1919-20, *National Expert Committee on Women Prisoners (1986-87)* under the Chairmanship of Justice V. R. Krishna Iyer and most of the committees on the subject have recommended and reiterated the need of setting up of separate prisons for women, but save for exceptional cases, they are far from being fulfilled.

The Report of the National Commission for women on "Custodial Justice for Women" (1993) merits attention. The Krishna Iyer Committee forms the basis of this Report. The following are some of the more important aspects, many of which do not cast any financial burden for their implementation.

1. Women prisoners – like men – should be informed of their rights under the law.
2. Women constables should conduct searches.
3. Women doctors should do medical check-ups of women prisoners or undertrials as soon as they come to prison.
4. Women prisoners should be allowed to contact their families and communicate with their lawyers, women social workers, and voluntary organizations.
5. Women prisoners should be allowed to keep their children with them.
6. Voluntary organizations of women should be encouraged to be associated with women prisoners.
7. Separate jails should be provided for women.
8. Special prosecution officers should be available to present the case of women prisoners.

The Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders<sup>4</sup> adopted a resolution on the Specific needs of women prisoners highlighting, amongst other things, that:

- because of the small number of women offenders, they often do not receive the same attention and consideration as do male offenders;
- this inattention often results in limited access for women to the necessary programmes and services, including placement in detention facilities far from their families and home communities; and
- that women most of the time have major responsibilities for children.

The concern about women prisoners has broadened to include the children of women in prison. The General Assembly's 2003 resolution on Human rights in the administration of justice invited:

*"Governments, relevant international and regional bodies, national human rights institutions and non-governmental organizations to devote increased attention to the issue of women in prison, including the children of women in prison, with a view to identifying the key problems and ways in which they*

The Commission on Human Rights 2004 resolution on human rights in the administration of justice, in particular juvenile justice highlighted "the need for special vigilance with regard to the specific situation of children, juveniles and women in the administration of justice, in particular while deprived of their liberty, and their vulnerability to various forms of violence, abuse, injustice and humiliation".

The different States and Union Territories have their own prison laws and manuals regulating prisons. The necessity of formulating a Model Prison Manual was stressed upon by the Hon'ble Supreme Court in landmark case of Ramamurthy Vs. State of Karnataka.<sup>5</sup> To this end, Ministry of Home Affairs, GOI had constituted an expert committee which prepared Model Prison Manual, 2003 which again revamped and updated in 2016.

*"Model Prison Manual, 2016, Ministry of Home Affairs, Government of India, New Delhi"* provides for special provisions for women prisoners. The said Manual inter alia recommends for-

- Classification and Separation of women prisoners,
- Restrictions on women prisoners,
- Exclusion of males to enter in female ward of any prison,
- Methods and procedure for locking female enclosures,
- Photography and Fingerprints,
- Daily Visits and Night Inspections,
- Provisions for female prisoners requiring mental health care,
- Custody of the female enclosure,
- Admission of Under-trail Prisoners and Convicted Women Prisoners, Quarantine on admission to prison and medical aid,
- Pregnancy, child birth in prison, children of women prisoners, welfare of the children of the women prisoners,
- Property of women prisoners, certain ornaments to be allowed to women prisoner,
- Education, diet/food, health care, clothing, bedding, accommodation, cleanliness of women enclosure, personal hygiene, amenities, interviews, books, religious books,
- Recreational and cultural programmes for women prisoners, vocational training, labour,
- Legal aid,
- Premature release, extensive use of Probation of Offenders Act, 1958, Transfer of women convict for release, release, after care, rehabilitation and follow-up, linkages with outside welfare agencies, women personnel etc.

The women are granted several rights for safeguarding them from illegal and unwarranted arrest and detention. These rights are in addition to other rights, which are granted to other male prisoners. Some of the prominent provisions of the Code of Criminal Procedure, 1973 are as-

1. **Procedural safeguard while making arrest of women:** Section 46 of the Code of Criminal Procedure, 1973 describes the mode and manner in which arrest are to be made. Under the proviso to Sub-Section (1) of Section 46 certain safeguards are provided while effecting the arrest. The proviso state that where a woman is to be arrested, unless the circumstances indicate to the contrary, it shall be presumed that she has submitted to custody on an oral intimation of arrest and unless the circumstances otherwise require or unless the police officer is a female, the Police Officer shall not touch the person of the woman for making her arrest.

In *R. D. Upadhyay v. State Of A. P.*<sup>6</sup>, the Supreme Court suggested that arrest of women suspects be made only by lady police. Such arrests should be sparingly made as it adversely affects innocent children who are taken into custody with their mother.

**Arrest of woman after sunset and before sunrise:** Sub-Section (4) of Section 46 provides that no woman shall be arrested after sun set and before sun rise, and where any exceptional circumstances exists, the woman police officer shall, by making a written report, obtain prior permission of the Judicial Magistrate of the First Class within whose local jurisdiction the offence is committed or the arrest is to be made.

This new Sub-Section prohibits the arrest of a woman after sunset and before sunrise except in unavoidable circumstances. In exceptional circumstances, if it becomes essential to arrest a woman after sunset and sunrise, the woman police officer (and not male police officer) shall obtain the prior permission of JMFC in writing.

Proviso to Sub-Section (1) of Section 46 and Sub-Section (4) of Section 46 are the recent amendments in the Code of Criminal Procedure, 1973 inserted by Code of Criminal Procedure (Amendment) Act, 2008<sup>4</sup> and the Code of Criminal Procedure (Amendment) Act, 2005<sup>5</sup> respectively. These amendments are the result of various decisions of the Supreme Court on the subject.

It is provided under Section 54 of the Code that where the arrested person is female, the examination of the body shall be made only by or under the supervision of a female registered medical practitioner.

- 2. Search of arrested woman:** Sub-Section (1) of Section 51 provides the special provision for the search of arrested woman. The Sub-Section provides that whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

No women can be searched except by another woman and having regard to the emphasis on decency. It is not necessary that the search shall be done by lady constables. In *Nawal Thakur v. State of H. P.*<sup>6</sup>, held that search of a foreigner who is a young lady by a lady member of local panchayat and placed in police lock up in the presence of a lady member, cannot be said to be improper merely because there was no lady constable in the police station.

- 3. Release of women, first offender on probation of good conduct or after admonition:** Section 360 of the Code of Criminal Procedure, 1973 empower Court to release women first offenders who is not convicted of an offence punishable with death or imprisonment for life by giving due regards to the age, character or antecedents of the offenders and to the circumstances in which the offence was committed on probation of good conduct or after admonition.

- 4. Postponement of capital sentence on pregnant woman:** Section 416 of the Code relates to postponement of death sentence to pregnant woman. The Section authorizes and mandates on High Court to postpone the capital sentence and to commute the sentence to imprisonment for life in case a woman accused sentenced to death is found to be pregnant. The Section is substantially amended in 2008. Before the amendment, the discretion is given to the High Court in regards of the commutation of the sentence. However, after the amendment it is necessary for the High Court to postpone the capital sentence as well commute it to life imprisonment. The High Court is the only judicial tribunal in which the law has vested the powers of postponing the execution of a sentence of death confirmed by it. This is an instance of a case contemplated by S. 362 in which the High Court, after signing or passing judgment, may alter or review, the same.

- 5. Relaxation to grant bail:** Under Section 437 of the Code, in non-bailable cases, the accused may be released on bail; but no bail can be granted where the accused appears on reasonable grounds to be guilty of an offence punishable either with death or with imprisonment for life. However, the rule does not apply to-

1. a person under sixteen years of age
2. a woman, or
3. a sick or infirm person.

Women accused are ordinarily entitled to bail<sup>10</sup>. However, this provision is not mandatory and the Court has considered the special facts of each case.

In *Simantini Samantaray v. State of Orissa*,<sup>11</sup> the Court observed as follows-

*"Though the allegation against the petitioner to the effect that she had ill-treated the deceased cannot be rejected out of hand, the fact that she is a young girl aged about 20 years and as such is to be treated with compassion and mercy keeping in view of the spirit of Section 437 (1) proviso, Code of Criminal Procedure, 1973, should not be lost sight of while considering her application under Section 438".*

It is made clear here that the mere fact that the Section makes a distinction between persons accused of graver offences and of lesser offences or that exceptions are created in favour of young persons, women and sick & infirm persons does not make the section constitutionally invalid being hit by Article 14 of the Constitution. The classification is based on intelligible differentia and has reasonable relation to the object of legislation in the matter of grant of bail.<sup>12</sup>

**Rights of Women Prisoners with child and guidelines issued by the Supreme Court for children of women Prisoners:** The practice of jailing women who are pregnant or having young child, the Mallimath committee feels this is cruel and most unreasonable to virtually put the innocent child in prison for no fault of

the child which will also affect his future life.

Children, for none of their fault, but per force, have to stay in jail with their mothers. In some cases, it may be because of the tender age of the child, while in other cases, it may be because there is no one at home to look after them or to take care of them in absence of the mother. The jail environment is certainly not congenial for development of the children.

The National Institute of Criminology and Forensic Sciences conducted a research study of children of women prisoners in Indian jails. The salient features of the study brought to the notice of all Governments in February 2002, are:

1. The general impression gathered was the most of these children were living in really difficult conditions and suffering from diverse deprivations relating to food, healthcare, accommodation, education, recreation, etc.
2. No appropriate programmes were found to be in place in any jail, for their proper bio-psychosocial development. Their looking after was mostly left to their mothers. No trained staff was found in any jail to take care of these children.
3. It was observed that in many jails, women inmates with children were not given any special or extra meals. In some cases, occasionally, some extra food, mostly in the form of a glass of milk, was available to children. In some jails, separate food was being provided only to grown up children, over the age of five years. However, the quality of food would be same as supplied to adult prisoners.
4. No special consideration was reported to be given to child bearing women inmates, in matters of good or other facilities. The same food and the same facilities were given to all women inmates, irrespective of the fact whether their children were also living with them or not.
5. No separate or specialized medical facilities for children were available in jails.
6. Barring a few, most mother prisoners considered that their stay in jails would have a negative impact on the physical as well as mental development of their children.
7. Crowded environment, lack of appropriate food, shelter and above all, deprivation of affection of other members of the family, particularly the father was generally perceived by the mothers as big stumbling blocks for the proper development of their children in the formative years of life.
8. Mother prisoners identified six areas where urgent improvement was necessary for proper upkeep of their children. They related to food, medical facilities, accommodation, education, recreation and separation of their children from habitual offenders.
9. No prison office was deployed on the exclusive duty of looking after these children or their mothers. They had to perform this duty alongside many other duties including administrative work, discipline maintenance, security-related jobs etc.
10. None of them was reported to have undergone any special training in looking after the children in jails.

A field action project prepared by the Tata Institute of Social Science (on 29th August, 2002) on situation of children of prisoners was placed before Supreme Court. The Union of India as well as the State Governments thereto has filed responses. The Report puts forward five grounds that form the basis for the suggestion to provide facilities for minors accompanying their mothers in the prison:

- a. The prison environment is not conducive to the normal growth and development of children;
- b. Many children are born in prison and have never experienced a normal family life, sometimes till the age permitted to stay inside (four to five years);
- c. Socialization patterns get severely affected due to their stay in prison. Their only image of male authority figures is that of police and prison officials. They are unaware of the concept of a home, as we know it. Boys may sometimes be found talking in the female gender, having grown up only among women confined in the female ward. Unusual sights, like animals on the road (seen on the way to court with the mother) are frightening.
- d. Children get transferred with their mothers from one prison to another, frequently (due to overcrowding), thus unsettling them; and
- e. Such children sometimes display violent and aggressive, or alternatively, withdrawn behavior in prison.

In celebrated and landmark judgment of *R. D. Upadhyay v. State Of A. P.*<sup>13</sup>, the

Supreme Court considered mainly the issue of children who are in jail with their mothers, who are in jail either as undertrial prisoners or convicts.

The Court in above stated case issued the following guidelines:

1. A child shall not be treated as an under-trial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.

## 2. Pregnancy:

- a. Before sending a woman who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery as well as for providing pre-natal and post-natal care for both, the mother and the child.
- b. Gynecological examination of female prisoners shall be performed in the District Government Hospital. Proper pre-natal and post-natal care shall be provided to the prisoner as per medical advice.

## 3. Child birth in prison:

- a. As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison.
- b. Births in prison, when they occur, shall be registered in the local birth registration office. However, the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.
- c. As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.

## 4. Female prisoners and their children:

- a. Female prisoners shall be allowed to keep their children with them in jail till they attain the age of **six years**.
- b. Upon reaching the age of six years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare department.
- c. Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/her own livelihood.
- d. When a female prisoner dies and leaves behind a child, the Superintendent shall inform the District Magistrate concerned and he shall arrange for the proper care of the child.

## 5. Food, clothing, medical care and shelter:

- a. Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the State/U.T. Government shall lay down the scales.
- b. Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.
- c. Clean drinking water must be provided to the children. This water must be periodically checked.
- d. Children shall be regularly examined by the Lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records. Extra clothing, diet and so on may also be provided on the recommendation of the Medical Officer.
- e. In the event of a woman prisoner falling ill, the jail staff must make alternative arrangements of looking after any children under her care.
- f. Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.
- g. Children of prisoners shall have the right of visitation.
- h. The Prison Superintendent shall be empowered in special cases and where circumstances warrant admitting children of women prisoners to prison without court orders provided such children be below 6 years of age.

## 6. Education and recreation for children of female prisoners:

- a. The child of female prisoners living in the jails shall be given proper education and recreational opportunities and while their mothers are at work in jail, the children shall be kept in crèches under the charge of a matron/female warden.
- b. There shall be a crèche and a nursery attached to the prison for women where the children of women prisoners will be looked after. Children below three

years of age shall be allowed in the crèche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said crèche and nursery outside the prison premises.

7. The stay of children in crowded barracks amidst (among) women convicts, under-trials, offenders relating to all types of crimes including violent crimes is certainly harmful for the development of their personality. Therefore, children deserve to be separated from such environments on a priority basis.
8. *Diet:* It is essential that the food groups to be provided in the portions mentioned in order to ensure that both macronutrients and micronutrients are available to the child in adequate quantities.
9. Jail Manual and/or other relevant Rules, regulations, instructions etc. shall be suitably amended within three months to comply with the above directions. If in some jails, better facilities are being provided, it shall continue.
10. The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mother are complied with in letter and spirit.
11. The Courts dealing with cases of women prisoners whose children are in prison with their mothers are directed to give priority to such cases and decide their cases expeditiously.

It is quite clear that insofar as the above case is concern, it becomes the landmark case in the history of the women prisoners. This case deals with every aspect of the women prisoners and women prisoners with children. Right from the classification and segregation of women prisoners from male prisoners and classification and separation among themselves the Court attempted to deal and make effective directions regarding food, shelter, medical and health care, clothing, education and recreational facilities, pregnancy, childbirth in prison. The Court further provides for female prisoners, their children and their rights of education, food and other facilities, diet of children of woman prisoners, mandated the amendment to all these effects in legislations and jail manuals of States and U.Ts., along with suitable directions to the Courts to deal the cases of undertrial women prisoner expeditiously and with priority. If these directions given by the Court be carried out and implemented in its letter and spirit, the vices against the women prisoners can be curtail at great extent. The need is to translate all these directions in action.

This is nothing but a genuine and sincere attempt by the Judiciary to recognize specific problems of women inmates and to provide the means for their solution. The enclosures for the women prisoners should have all the requisite facilities with reference to their special needs such as segregation, security, pregnancy, childbirth and family care along with other rights of children with women prisoners as recognized by the judiciary, health care, rehabilitation etc. Care should be taken to ensure that women inmates are protected against any form of exploitation.

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**Notes:**

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| 2. Equitas (Bombay High Court): | EQ(BOM) |
| 3. Equitas (Supreme Court):     | EQ(SC)  |
| 4. Supreme Court Cases:         | SCC     |